

## **TO HOLD OR NOT TO HOLD**

### **SUMMARY**

On September 21, 2015 the Humboldt County Civil Grand Jury (HCCGJ) received a detailed complaint questioning the release of two arrested men from the Humboldt County Correctional Facility (HCCF). The complainant alleges that in September of 2015 these two men were released from the HCCF based on their score on the Ohio Risk Assessment Tool (ORAT). He further alleges that in a conversation with the Sheriff he was told that the HCCF had no choice but to release the men based on their ORAT score. He also alleges that the Sheriff communicated to him that the arresting officers could have filled out a “hold form” but did not.

The Humboldt County Civil Grand Jury investigated the role the ORAT and its accompanying “hold forms” play in the booking process at the HCCF.

HCCGJ interviews with arresting officers from a number of Humboldt County police agencies attest to little if any knowledge of the existence of ORAT hold forms. When officers were shown the HCCF “Request for Non-Release” form, they responded almost uniformly with: “that’s the Misdemeanor Incarceration Form.” The forms still have misdemeanor Penal Code references [Section 853.6(i)] printed on them. (See Appendix). Arresting officers within the Sheriff’s Department were no more knowledgeable than those from city agencies.

Humboldt County has nine law enforcement agencies, but only one booking/holding facility, the HCCF. It is vital for the protection and safety of the County’s citizens that any changes in booking procedures at the HCCF be clearly communicated and practiced by all of these agencies.

The Humboldt County Civil Grand Jury finds the Humboldt County Sheriff’s Office (HCSO) remiss in making sure that all arresting agencies are properly informed as to the use of the new ORAT holding form. The HCCGJ also finds the Sheriff’s process of converting the “Misdemeanor Incarceration Form” into the current “Request for Non-Release Form” short-sighted and confusing. It is possible that people have been released from the HCCF, who would not have been, had the arresting officers known of their available options.

The Humboldt County Civil Grand Jury recommends that the Sheriff initiate a formal process by which any changes in the HCCF booking process are communicated to local law enforcement agencies. The HCCGJ also recommends that a new ORAT release tool be created in collaboration with those same local departments. Lastly, the HCCGJ recommends that all law enforcement departments within Humboldt County instruct their officers on the proper use of this newly created ORAT Tool.

### **BACKGROUND**

The 2015-2016 Humboldt County Civil Grand Jury received a detailed citizen complaint regarding failures in the booking process of the HCCF. The complaint concerned the release from the HCCF of two men arrested in early September of 2015. The complaint alleges that these individuals, though arrested with considerable amounts of heroin and cash, were released on their own recognizance. The complainant alleged that the reason given for the release of these

two men was based on their score using the Ohio Risk Assessment Tool (ORAT). “I was told by the Sheriff that the jail had no choice and had to release the men based on the criteria contained in the Ohio Risk Assessment Tool.”

The Grand Jury decided to investigate the use of the ORAS and its role in the booking procedure of the HCCF.

Humboldt County has one booking/holding facility: the Humboldt County Correctional Facility. Humboldt County contains multiple policing agencies, in addition to the Humboldt County Sheriff’s Department. The County has five City Police Departments: Rio Dell, Ferndale, Fortuna, Eureka, and Arcata. The County also has the Humboldt State University Police Department, the California Highway Patrol, and the Hoopa Tribal Office. Arrests made by any of these agencies, which lead to incarceration, involve the booking process of the Humboldt County Correctional Facility.

Clear lines of communication between the HCCF and the County’s various arresting entities are vital when possible changes to the HCCF’s booking process are made. One such change was made, according to the Sheriff’s Office, two years ago. Led by the HCSO, with input from some of the other local agencies, it was decided to introduce the use of ORAT into the booking process at the HCCF.

## **METHODOLOGY**

The Humboldt County Grand Jury:

- Met with various Humboldt County Law Enforcement Officers to understand their knowledge and perspective on the Humboldt County Correctional Facility booking process and the use of the ORAT.
- Met with Humboldt County Correctional Staff to understand the booking process, use of the ORAT and the use of the “Request for Non-Release” form.
- Met with the Humboldt County Sheriff to review the use and history of the ORAT and to verify findings acquired from interviews with Correctional Facility staff.

## **DISCUSSION**

According to Humboldt County Correctional Facility staff, prior to the use of the ORAT, they used a specific booking system to control the Correctional Facility’s population. While that system was adequate in managing the HCCF’s population, it did not contain a risk assessment component. The HCSO searched for a facilities population management tool that also considered the risk aspect of releasing people on their own recognizance. The ORAT was already in use by the Supervised Release Program of the Humboldt County Probation Department. They were using it to identify potentially successful clients for their programs. The HCSO made the decision to use the ORAT, consulting with an informal sub-committee of local law enforcement personnel.

The ORAT is a one-page questionnaire. The form contains questions in a multiple-choice format, with each question given a point value. The composite score is intended to indicate whether the arrestee is a safe risk if released on their own recognizance. The numerical threshold needed for release, can and has been changed. When overcrowding in the Humboldt County Correctional Facility becomes a concern, this threshold can be lowered. When overcrowding is not an issue, it is more difficult to be released. Not all arrestees are eligible to take the ORAT. Part of the booking process is to determine whether a candidate can legally be released based on the ORAT.

The arresting officer may also void a possible release based on the ORAT by completing a "Request For Non-Release Form." (see Appendix). By using this form an arresting officer has the ability to require the HCCF to hold an arrestee regardless of their ORAT score.

According to both HCCF staff and the Sheriff, the new form is simply the old Misdemeanor Incarceration Form with the titled changed to read "Request for Non-Release." The penal codes on the new form still refer to [Section 853.6(i)] misdemeanor concerns, not felonies.

The Humboldt County Civil Grand Jury discovered that law enforcement officers, those charged with taking arrestees through the HCCF booking process, did not know of the existence of the new "Request For Non-Release Form" and did not know they could use this form to hold a potential ORAT release. When the HCCGJ showed officers the Request For Non-Release Form, the officers responded by stating that it was the Misdemeanor Incarceration Form and not suitable for felony arrests that normally qualified for ORAT release.

When HCCF staff was interviewed by the HCCGJ, they admitted to their confusion in the use of ORAT. HCCF staff also acknowledged that many arresting officers did not know of the new form. When interviewed by the HCCGJ, the Chief of the Eureka Police Department expressed concerns that possible release of dangerous felons could result from improper use of the ORAT, or lack of use of the hold form.

The number of felons released as a result of the ORAT has varied from month to month in 2015. When the inmate population of HCCF neared capacity, the monthly ORAT releases ranged between 20 and 27. When overcrowding was not an issue, the monthly rate varied between three and seven. The HCCGJ could not obtain data as to how many Request for Non-Release Forms were used. The HCCGJ was told by both HCCF staff and the Sheriff's Office that those figures were not available.

The current booking process requires an arresting officer to submit the form only if they consider a felony ORAT release should not be made. The HCCGJ suggests that the opposite process could better address the concerns expressed by the Chief of the Eureka Police Department and the HCCF staff. Arresting officers should fill out a form and sign that form to verify someone should be released, given an appropriate ORAT score. No signature, no release. The HCCGJ recommends the Sheriff's Office create an "ORAT Release Form". Before any arrested felon could be released based on an ORAT score, the arresting officer would be required to complete and sign that form. The existence of a signed ORAT Release Form would clearly indicate the arresting officer could find no reason to hold someone who might qualify for release based on an ORAT score. Failure to submit a signed ORAT Release Form would prohibit any ORAT based release.

## **FINDINGS**

**F1.** Changes made to the booking process of The Humboldt County Correctional Facility have not been adequately communicated to the arresting officers from the many law enforcement agencies within Humboldt County.

**F2.** Law enforcement officers in Humboldt County are not sufficiently knowledgeable about their role in determining the release or hold of potential arrested felons, based on the current use of ORAT, during the booking process of the HCCF.

**F3.** The current “Misdemeanor Incarceration Form” re-titled “Request for Non Release” form is, and was, an ineffective way to address the issues associated with the release of felons based on an ORAT score.

## **RECOMMENDATIONS**

**R1.** The Humboldt County Civil Grand Jury recommends that the Humboldt County Sheriff’s Department create and initiate a formal process of communication with law enforcement agencies in Humboldt County regarding any and all changes to the booking process of the Humboldt County Correctional Facility. **(F.1)**

**R2.** The Humboldt County Civil Grand Jury recommends that the Humboldt County Sheriff’s Department, in collaboration with local law enforcement agencies, develop a new holding form that arresting officers can use to ensure that felons who should not be released will not be released. **(F.3)**

**R3.** The Humboldt County Civil Grand Jury recommends that the Humboldt County Sheriff’s Department and all local law enforcement agencies instruct their officers on the existence and proper use of the new Humboldt County Correctional Facilities holding form. **(F.2)**

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code section 933.05, the Humboldt County Civil Grand Jury requests responses as follows:

From the following governing bodies:

- The Humboldt County Sheriff’s Office **(R1, R2, R3.)**
- The Arcata Police Department **(R1, R2, R3.)**
- The Rio Dell Police Department **(R1, R2, R3.)**
- The Ferndale Police Department **(R1, R2, R3.)**
- The Fortuna Police Department **(R1, R2, R3.)**

- The Eureka Police Department (**R1, R2, R3.**)

#### **INVITED RESPONSES**

- The Humboldt State University Police Department
- The California Highway Patrol

#### **APPENDIX :**

The current “Request for Non-Release Form.”

REQUEST FOR NON - RELEASE

FULL NAME OF ARRESTED PERSON \_\_\_\_\_ CASE NUMBER \_\_\_\_\_

CHARGE \_\_\_\_\_ DATE AND TIME OF ARREST \_\_\_\_\_

ARRESTING OFFICER \_\_\_\_\_ PIN# \_\_\_\_\_

TO BE COMPLETED UPON A PHYSICAL ARREST, PURSUANT TO PENAL CODE

SECTION 853.6(i).

- 1. The person arrested was so intoxicated that he or she could have been a danger to himself or herself or others.
- 2. The person arrested required medical examination or medical care, or was otherwise unable to care for his or her own safety.
- 3. The person arrested was charged with one or more of the offenses listed in Section 40302 or 40303 of the Vehicle Code.
- 4. The person arrested had one or more outstanding arrest warrants issued.
- 5. The person arrested could not provide satisfactory evidence of personal identification.
- 6. The person arrested, if released immediately, would jeopardize the prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offenses.
- 7. The person arrested would be reasonably likely to continue the offense or offenses, or the safety of persons or property would be imminently endangered by the release of the person arrested.
- 8. The person arrested demanded to be taken before a magistrate or refused to sign the Notice to Appear.
- 9. There is reason to believe that the person arrested would not appear at the time and place specified in the Notice. The basis for this determination shall be specifically stated below.

HCCF USE ONLY

SUPERVISOR REVIEW:  
REASON FOR DENIAL:

APPROVED

DENIED

Signature \_\_\_\_\_

Date \_\_\_\_\_

DISTRIBUTION: \_\_\_\_\_

WHITE - COURT

YELLOW - FILE

PINK - ARRESTING OFFICER

REQUEST FOR NON - RELEASE

FULL NAME OF ARRESTED PERSON \_\_\_\_\_ CASE NUMBER \_\_\_\_\_

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APPROVED

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Signature \_\_\_\_\_

Date \_\_\_\_\_

DISTRIBUTION: \_\_\_\_\_

WHITE - COURT

YELLOW - FILE

PINK - ARRESTING OFFICER